

Center for Medicaid and State Operations/Survey and Certification Group

**Ref: S&C-04-18**

**DATE:** February 12, 2004

**FROM:** Director  
Survey and Certification Group

**SUBJECT:** Impact of the Health Insurance Portability and Accountability Act (HIPAA) on the Nursing Home Requirement for Posting Survey Results - **Clarification**

**TO:** State Survey Agency Directors

**Letter Summary**

- This letter replaces S&C-03-26, which was released on June 12, 2003.
- This letter clarifies that nursing homes are required to post survey results in a place readily accessible to residents, family members and legal representatives, and that the state or Secretary is required to make survey results available to the general public.
- The HIPAA Privacy Rule has not altered either the statutory requirement for nursing homes to post results or the requirement for the state/Secretary to make survey results available.

The purpose of this letter is to provide clarification to S&C-03-26, dated June 12, 2003 and its attached suggested template. The statutory mandate for nursing facilities to post survey results can be found at §1919(c)(8) of the Social Security Act (SSA). The statute that requires the state or the Secretary to provide the public with a means of access to survey results is located at §1819(g)(5) and 1919(g)(5). This letter clarifies that the HIPAA Privacy rule has not changed the statutory requirement for nursing homes to post survey results in a place readily accessible to residents, family members and legal representatives. It also notes that the HIPAA Privacy Rule has not altered the state or Secretary's obligation to provide the general public with a means to access these survey results as well. Regulations at 45 C.F.R. §164.512(a) which clarify the Department's HIPAA requirements provide that protected health information (survey results) may be used and disclosed without the authorization of the subject of that information (nursing homes) to the extent a law mandates such use or disclosure.

We have attached a suggested template for use by the Centers for Medicare & Medicaid Services' Regional Offices (RO) and State Survey Agencies in response to providers' concerns over making survey results available as mandated by the SSA.

**Effective Date:** Immediately.

**Training:** The information contained in this announcement should be shared with all survey and certification staff, their managers and the state/RO training coordinator.

/s/  
Thomas E. Hamilton

cc: Survey and Certification Regional Office Management (G-5)

Attachment

Mr. X  
Administrator  
Specific Nursing Home  
100 Main Street  
City, State 11111

Re: Privacy Concerns about the Posting of Nursing Facility Survey Results

Dear Mr. X:

Thank you for your letter expressing concerns with the posting of federal and state nursing facility survey results in accordance with the statutory and regulatory requirements governing such facilities.

The nursing facility survey process was designed with three interests in mind: to provide surveyors with the information necessary to assess nursing facilities' compliance with federal standards, inform the surveyed facility and the general public about any deficiencies determined and the bases for those deficiencies, and to protect the confidentiality of personal and clinical records of nursing facility residents.

In furthering these goals, every effort is made during the survey process to minimize the use and disclosure of nursing facility residents' health information during the survey process. Deficiency statements, however, need to provide sufficient evidence to support any deficient practice findings as these citations serve as the ultimate basis for the non-compliance finding. While the residents selected as part of the survey sample are referred to by code (rather than by name, social security number, or some other easily identified identifier), it may be possible in rare circumstances to determine the identity of a resident through the documentation of a deficient practice.

While the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (45 CFR Parts 160 and 164; 65 Fed. Reg. 82462 as modified by 67 Fed. Reg. 14776) guarantees certain minimum privacy rights to the subjects of protected health records, those rights have limitations. For example, the HIPAA Privacy Rule provides that protected health information may be used and disclosed without the authorization of the subject of that information to the extent a law mandates such use or disclosure. Such mandates include §1919(c)(8) of the Social Security Act (SSA) that orders nursing facilities to post survey results in a place readily accessible to residents, family members, and legal representatives of the residents. Furthermore, §§1819(g)(5) and 1919(g)(5) of the SSA mandate that the general public must have a means to access these survey results through the State or the Secretary. The HIPAA Privacy Rule provides that protected health information may be used and disclosed without the authorization of the subject of that information for health oversight activities. As such, government regulatory programs that need health information to determine compliance with program standards (including the nursing facility survey program) do not need to obtain an individual's authorization to use that individual's health records for the appropriate oversight of entities subject to that program's regulations.

We share your concerns about the privacy of nursing facility residents' medical records, but we must balance that concern with our statutory duties to regulate the nursing facility industry through the use of surveys and public access to the results of those surveys. We regret that in rare circumstances the statements of deficiencies may inadvertently release information that can be traced to a particular resident of a surveyed facility. While we regret such inadvertent releases, however, we firmly believe that they do not constitute violations of the HIPAA Privacy Rule's spirit or provisions.

If you have any further questions or comments on this matter, please do not hesitate to contact [name of the state or RO contact person], at [phone number or address]. Alternatively, you may wish to contact your State Survey Agency for additional information on this subject.